

Appl. No. 10/659,100
Docket No. 9031
Am dt. Dated November 26, 2008
Reply to Office Action mailed on May 29, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 17-10 and 19-31 are pending in the present application. No additional claims fee is believed to be due.

Claims 20 and 29 are amended. Support for these amendments is found, for example, at pages 8-10 of the specification.

Claim 32 is cancelled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(e) As Being Anticipated By Willison et al

The Office Action stated that Claims 8-10, 19, 20, 22, and 28-32 were rejected under 35 U.S.C. 102(e) as being anticipated Willison et al. (US 2004/0005277). Applicants traverse this rejection and respectfully request reconsideration.

The two independent claims included in this rejection are claim 19 and claim 28. Claim 19 is directed to a tooth whitening product comprising, a film having a thickness and comprising a water hydratable polymer and a tooth whitening agent; a mesh comprising a plurality of fibers, the fibers arranged to define a plurality of void spaces between the fibers; and wherein the plurality of void spaces *extends through the thickness of the film* (emphasis added). Claim 28 is directed to a mesh having a first side and second side and comprising a plurality of coated fibers, the coated fibers arranged to provide a plurality of void spaces *that extend from the first side of the mesh to the second side of the mesh*; and wherein the fiber coating comprises a water hydratable polymer and a tooth whitening agent (emphasis added).

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The Office Action characterized Willison as teaching a scrim sandwiched between two layers of material that make up an oral care layer and a scrim entirely surrounded by the oral care layer. Both of these characterizations necessitate that the scrim is covered up and/or filled in. Neither of these characterizations anticipates where the void spaces extend through the thickness of the film (claim 19) or extend from the first side of the mesh to the second side of the mesh (claim 28). As Examiner is aware, anticipation under 35 U.S.C. §102 requires the disclosure in a single prior art reference of each element of the claims under consideration, *Alco Standard Corp. v. TVA*, 1 U.S.P.Q.2d 1337, 1341 (Fed. Cir. 1986). As Willison fails to teach all of the limitations of independent claims 19 and 28, Applicants submit that claims 19, 28, and those dependent thereon are novel over Willison. Reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Willison et al In View Of Ruben

Claim 7 has been rejected under 35 USC §103(a) as being unpatentable over Willison et al (US 2004/0005277) in view of Ruben (US 6,146,655). This rejection is traversed and reconsideration is respectfully requested.

It is respectfully submitted that Willison in view of Ruben does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 7 depends. The deficiencies of Willison are discussed above and Ruben fails to cure its deficiencies. As such, claim 7 is nonobvious over Willison in view of Ruben and reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Willison et al In View of Chen et al

Claims 21 and 23-27 have been rejected under 35 USC §103(a) as being unpatentable over Willison et al (US 2004/0005277) as applied to claims 8-10, 19, 20, 22 and 28-32 above in view of Chen et al. (US6,261,679). This rejection is traversed and reconsideration respectfully requested.

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For claim 21, it is respectfully submitted that Willison in view of Chen does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations of independent claim 19, from which claim 21 depends. The deficiencies of Willison are discussed above and Chen fails to cure its deficiencies. As such, claim 21 is nonobvious over Willison in view of Ruben and reconsideration is respectfully requested.

Independent claim 23 is directed to tooth whitening product, comprising: a film having a thickness and comprising a first water hydratable polymer and a tooth whitening agent; a mesh comprising a plurality of fibers, the fibers arranged to define a plurality of void spaces between the fibers and the plurality of fibers comprise a second water hydratable polymer; and wherein the film at least partially fills the mesh. The Office Action stated that Willison did not disclose fibers which comprise a hydratable polymer and looked to Chen to fill the void.

Chen is generally directed to fibrous absorbent materials and methods of making the same. Chen discusses that in absorbent articles “it is desirable to employ materials having high void volume, a hydrophilic nature, and wet resiliency, or the ability to maintain void volume when wet and under load” (Col. 1, lines 5-8). Chen gives examples of possible uses for its invention to include “feminine care pads, tampons, diapers, shoe pads” and others (Col. 2, lines 43-60). All of these articles are designed to absorb and retain fluids. Contrastingly, Applicants invention is directed to tooth whitening products. While the mesh in claim 23 comprises a water hydratable polymer, it is not generally an absorbent article as discussed in Chen, but instead a part of the product used to deliver the tooth whitening agent. If the mesh were designed to be an absorbent article as contemplated in Chen, it is likely that it would hamper the ability of the product to deliver the whitening agent to the teeth. As Examiner is aware, references relied upon to support a rejection in 35 U.S.C. §103 must provide an enabling disclosure, i.e. they must place the claimed invention in the possession of the public, *In re Payne*, 203 USPQ 245 (CCPA 1979). As the combination of Willison

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and Chen fails to provide an enabling disclosure, Applicants submit that claim 23 and those dependent thereon are non-obvious over the combination. Reconsideration is respectfully requested.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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